

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>Hispanic Broadcast System, Inc.</b>	)	EB-04-IH-0381
	)	Facility ID No. 27291
Licensee of Noncommercial Educational Station	)	NAL/Account No. 200532080121
WQQZ(FM), Clermont, Florida	)	FRN 0006596340

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: 02/08/2005****Released: 02/09/2005**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Hispanic Broadcast System, Inc. ("HBS"), licensee of noncommercial educational Station WQQZ(FM), Clermont, Florida, has apparently violated section 399B of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 399b, and section 73.503 of the Commission's rules, 47 C.F.R. § 73.503, by willfully and repeatedly broadcasting prohibited advertisements. Based upon our review of the facts and circumstances of this case, we conclude that HBS is apparently liable for a monetary forfeiture in the amount of \$10,000.

**II. BACKGROUND**

2. This case arises from a complaint made to the Commission in July 2004, alleging that noncommercial educational Station WQQZ(FM) broadcast prohibited underwriting announcements during the month of June 2004.<sup>1</sup> Thereafter, the Bureau inquired of the licensee concerning the allegations contained in the complaint.<sup>2</sup> HBS responded substantively to the *LOI*<sup>3</sup> on November 12, 2004.<sup>4</sup>

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<sup>1</sup> See e-mail referral from Diane Law-Hsu, Tampa Field Office, to David Brown, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, dated July 23, 2004 ("*Complaint*").

<sup>2</sup> Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to HBS, dated October 7, 2004 ("*LOI*").

<sup>3</sup> Letter from James L. Oyster, Esq., to Kenneth M. Scheibel, Jr., Attorney, Investigations and Hearings Division, Enforcement Bureau, dated November 12, 2004 ("*Response*").

<sup>4</sup> In its response, HBS requested also, pursuant to 47 C.F.R. § 0.459, that the Commission afford confidentiality to certain proprietary financial information included therein. *Response* at Exhibit 4. Because this *NAL* discusses only that information already made public by HBS, *i.e.*, the text of the announcements broadcast, the identity of the underwriters as revealed in such announcements, and when and how many times the announcements were aired, we need not rule on the confidentiality request. Until we so rule, we will honor HBS's request for confidential treatment of certain internal documents and

### III. DISCUSSION

3. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>5</sup> In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.<sup>6</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>7</sup> As described in greater detail below, we conclude under this procedure that HBS is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violations of the Commission's underwriting rules.

#### A. Hispanic Has Willfully and Repeatedly Broadcast Advertisements in Violation of Section 399B of the Act and Section 73.503 of the Commission's Rules

4. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.<sup>8</sup> The pertinent statute specifically provides that noncommercial educational stations may not broadcast advertisements.<sup>9</sup> Although contributors of funds to such stations may receive on-air acknowledgements, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or

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business information that it has supplied to the Bureau during the course of this investigation. *See* 47 C.F.R. § 0.459(d)(1).

<sup>5</sup>47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

<sup>6</sup>47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>7</sup>*See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

<sup>8</sup> 47 U.S.C. § 399b(a).

<sup>9</sup> *Id.*

businesses.<sup>10</sup> Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.<sup>11</sup> At the same time, however, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter. Consequently, the Commission expects only that licensees exercise reasonable, “good faith” judgment in this area.<sup>12</sup>

5. At issue here are two underwriting announcements that HBS admits that Station WQQZ(FM) broadcast from May 31 through June 27, 2004.<sup>13</sup> HBS acknowledges that it received remuneration for airing the messages on behalf of the station’s underwriters, “Old Town” and “Multi-Channel Marketing,” that both are for-profit entities, and that the two messages were repeated a total of 288 times during the stated period.<sup>14</sup> With respect to Old Town, HBS represents that the station broadcast several additional announcements on its behalf during September 2004, which, like those it previously aired, provided information to listeners concerning the weekly local event “Fiesta en Old Town,” which the station cosponsored.<sup>15</sup> Although HBS provided contract information and broadcast transcripts pertaining to such later announcements, it did not identify the number of times or the specific dates on which it aired those later messages.<sup>16</sup>

6. We first note that both of the foregoing announcements were broadcast in Spanish, and that HBS takes exception to certain aspects of the translations that the Bureau included with its *LOI*.<sup>17</sup> Having reviewed HBS’s textual exceptions, we do not believe that they alter materially the overall context or meaning of the underwriting messages in either instance. However, we accept HBS’s alternate phrasings insofar as they represent the basis by which it

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<sup>10</sup> See *In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), *republished*, 7 FCC Rcd 827 (1992) (“*Public Notice*”).

<sup>11</sup> *Id.*

<sup>12</sup> See *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

<sup>13</sup> *Response* at Exhibit 1, Declaration of Hispanic’s General Manager, Daniel Pol.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at Exhibit 2, Supplement to Response.

<sup>16</sup> Our action herein does not reflect consideration of the later messages that Hispanic aired on behalf of Old Town. We retain discretion to make separate inquiry of these messages at a later date.

<sup>17</sup> *Response* at Exhibit 1. Hispanic argues that the Old Town announcement should be interpreted to read “this Sunday the 27<sup>th</sup>, the fiesta Sunday in Old Town comes to an end,” as opposed to “[t]his Sunday the 27<sup>th</sup> is the end of the Party Sunday in Old Town;” and that the phrase “[a]h! Do not forget the party beads!” should alternatively be read to mean “one should not forget the party beads.” Hispanic claims that the Multi-Channel Marketing announcement should be interpreted as precisely stating that “[Multi-Channel Marketing] sponsors the Latin Power [*i.e.*, Station WQQZ(FM)] and offers the services and systems from Dish Network with 100% digital signal on audio and video, and more than 30 channels in Spanish,” instead of “[Multi-Channel Marketing] sponsors the Latin power and offers the Dish Networks service system.” Hispanic argues also that the same message stated that “premium channels included on additional plans,” not “different plans and channel packages available, premium channels and additional plans.” *Id.*

attempted to exercise its “good faith” discretion under *Xavier, supra*. Thus, we have revised our attached transcripts according to HBS’s translations.

7. After careful review of the record in this case, however, we find that both announcements apparently exceed the bounds of what is permissible under section 399B of the Act, and the Commission’s pertinent rules and policies, in light of the “good faith” discretion afforded licensees under *Xavier, supra*. We so conclude because the Old Town announcement invites or urges business patronage, and the Multi-Channel Marketing announcement seeks impermissibly to distinguish favorably the underwriter from its competitors by implying that it offers superior service, and by listing its products in such a manner that suggests an overall promotional intent.

8. With regard to the Old Town announcement, we specifically reject HBS’s contention that the message inviting listeners to the “Fiesta en Old Town” is acceptable because no event admission or parking fees were charged, and that this factor rendered it a “not-for-profit type of event” intended to benefit listeners alone.<sup>18</sup> HBS has not established, however, that either Old Town or any of the vendors that its messages promoted, qualify as not-for-profit entities, or that the event in question received official recognition as such.<sup>19</sup> Contrary to HBS’s contentions, the Commission has held that the offer of free products or services by for-profit underwriters to be promotional and prohibited because they seek to induce business patronage.<sup>20</sup> In this case, the announcement’s specific mention of the “crafts, seventy specialized tables, eight restaurants and eighteen amusement park rides,”<sup>21</sup> in conjunction with Old Town’s offer of free admission and parking, appears to have jointly benefited the presumably for-profit vendors and other concessionaires operating at the underwriter’s event by inducing or encouraging listener attendance. Such references render the announcement to be promotional of for-profit entities, and are thus prohibited.<sup>22</sup>

9. HBS further contends that the Multi-Channel announcement includes only a “generic description of services provided by the sponsor that would be of interest to [listeners]” that is in accordance with the Commission’s rules and precedent.<sup>23</sup> We reject this claim. To the contrary, the promotional intent of this announcement is demonstrated by its reference to Multi-Channel as an “established dealer in Central Florida for the past ten years,” that offers “installation services in twenty four hours.”<sup>24</sup> By thus seeking to distinguish Multi-Channel from

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<sup>18</sup> *Response* at Exhibit 1.

<sup>19</sup> *Cf. Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Report and Order, 90 FCC 2d 895, 900 n.16 (1982), *recon.*, 97 FCC 2d 255 (1984) (“1982 Policy Statement”) (arraying types of institutions that qualify under IRS guidelines as not-for-profit organizations).

<sup>20</sup> *See Public Notice, supra*.

<sup>21</sup> *Response* at Exhibit 1.

<sup>22</sup> The fact that the event was cosponsored by the noncommercial educational station would not alter this analysis, inasmuch as the Commission prohibits the joint-promotion of such events with for-profit entities. *See Isothermal Community College (WNCW(FM))*, Memorandum Opinion and Order, 16 FCC Rcd 21360 (Enf. Bur. 2001), *modified*, 17 FCC Rcd 22666 (Enf. Bur. 2002).

<sup>23</sup> *Response* at Exhibit 1.

<sup>24</sup> *Id.*

its competitors that are less experienced or are less responsive to their customers, HBS promotes its for-profit underwriter.<sup>25</sup> We find, also, that the message appears to exceed the “identification only” purpose of underwriting announcements by setting forth an excessively detailed “menu listing” of services offered by the underwriter, which belies an overall promotional intent.<sup>26</sup> Finally, we note that the Commission has long held licensees responsible for ensuring that any material broadcast in a foreign language conforms to the requirements of the Act and the Commission’s rules.<sup>27</sup> To the extent that HBS has ignored its duties in this regard, we remind it to take appropriate care in the future to avoid further lapses of this type.

## B. Proposed Action

10. Section 503(b) of the Act and section 1.80(a) of the Commission’s rules both state that any person who willfully or repeatedly fails to comply with the provisions of the Act, the rules or Commission orders shall be liable for a forfeiture penalty.<sup>28</sup> The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of \$2,000 for violation of the enhanced underwriting requirements.<sup>29</sup> The *Forfeiture Policy Statement* also provides that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>30</sup>

11. In this case, it appears that, from May 31 through June 27, 2004, HBS willfully and repeatedly broadcast advertisements in violation of section 399B of the Act and section 73.503(d) of the Commission’s rules. We believe that a substantial forfeiture is necessary because of the lengthy period of time over which the prohibited announcements were aired, a full month, and the 288 times that the announcements were repeated during that period. Nevertheless, we believe the potential liability if we simply applied the \$2,000 base amount to each of the 288 apparent violations would be excessive here. Based on all the circumstances, and after examining forfeiture actions in other recent underwriting cases, we believe that a proposed forfeiture of

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<sup>25</sup> See, e.g., *Tri-State Inspirational Broadcasting Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 16800 (Enf. Bur. 2001) (promotional reference was found where jeweler indicated that he obtained gemstones directly from his diamond cutter, because the distinction implied that this practice was superior to competitors who drew supply from other sources).

<sup>26</sup> See, e.g., *Penfold Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 23731 (Mass Media Bur. 1998)(references adverting to general usefulness, convenience or advantages of products or services are promotional); *Letter of the Chief, Complaints and Political Programming Branch, Enforcement Division, to Evansville-Vanderburgh School Corporation (WPSR(FM))* (Mass Media Bur. March 23, 1999).

<sup>27</sup> See *Licensee Responsibility to Exercise Adequate Control Over Foreign Language Programs*, Public Notice, 39 FCC 2d 1037 (1973).

<sup>28</sup> See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>29</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997) (“*Forfeiture Policy Statement*”), recon. denied 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

<sup>30</sup> 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 27.

\$10,000 is appropriate here.<sup>31</sup>

12. Accordingly, applying the *Forfeiture Policy Statement* and the statutory factors to this case, we conclude that HBS is apparently liable for a forfeiture in the amount of \$10,000, for violating the Commission's underwriting rules. We will not hesitate to take even stronger enforcement action against noncommercial educational licensees that engage in similarly serious violations of our underwriting requirements.

#### IV. ORDERING CLAUSES

13. In view of the foregoing, we conclude that a monetary sanction is appropriate. Accordingly, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311 and 1.80 of the Commission's rules, Hispanic Broadcast Systems, Inc., licensee of noncommercial educational Station WQQZ(FM), Clermont, Florida, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$10,000 for willfully and repeatedly broadcasting advertisements in violation of section 399B of the Act, 47 U.S.C. § 399b, and section 73.503 of the Commission's rules, 47 C.F.R. § 73.503.

14. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, HBS SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL Acct. No. and FRN referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8<sup>th</sup> Floor Mailroom, Chicago, IL 60601. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

16. The response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W, Room 4-C330, Washington DC 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group,

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<sup>31</sup> See, e.g., *Christian Voice of Central Ohio, Inc.(WCVZ(FM))*, 19 FCC Rcd 23663 (Enf. Bur. 2004) (\$20,000 forfeiture proposed for underwriting violations), *response pending*; *Minority Television Project, Inc. (KMTP-TV)*, Forfeiture Order, 18 FCC Rcd 26611 (Enf. Bur. 2003), *application for review denied*, Order on Review, FCC 04-293, 19 FCC Rcd \_\_\_\_ (December 23, 2004) (\$10,000 forfeiture for underwriting violations), *recon. pending*.

445 12th Street, S.W., Washington, D.C. 20554.<sup>32</sup>

19. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Hispanic Broadcast System, Inc., P.O. Box 1553, Quebradillas, Puerto Rico 00678, and to its counsel, James L. Oyster, Esq., 108 Oyster Lane, Castleton, Virginia 22716-2839.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>32</sup> See 47 C.F.R. § 1.1914.

**ATTACHMENT**

The following text was transcribed from underwriting announcements broadcast over noncommercial educational Station WQQZ(FM), Clermont, Florida.

*Old Town*

This Sunday the 27<sup>th</sup>, the Fiesta Sundays in Old Town come to an end. Live music from 2 until 6 at night, on Old Town's principal stage. With "La Sonora de Orlando." Live transmissions through 88.7 FM. Fiesta Sundays in Old Town. With crafts, seventy specialized tables, eight restaurants and eighteen amusement park rides. One should not forget the party beads. Enjoyment for the whole family in Old Town. One mile east from I-4, exit 64A on Road 192, Kissimmee. Information 407-396-4888 and in old-town.com. Fiesta Sundays in Old Town will end this Sunday, the 27<sup>th</sup> with "La Sonora de Orlando." A present for the people, presented by Telemundo Channel 40 and the "salsero power" of 88.7 FM.

*Multi-Channel Marketing*

Multi-Channel Marketing, an established dealer in central Florida for the past ten years, sponsors the "Latin Power" and offers the services and systems from Dish network with a 100% digital signal on audio and video, and more than 30 channels in Spanish, such as "TV Colombia," "Telemundo," "Galavision," "Deportes," "FOX," "ESPN," "Cadena Sur," "TV Azteca," "TV Chile," "Tele Gol," "Univision," and "Playboy" in Spanish, included in the Hispanic package. Spanish movie channels twenty-four hours and others with classic movies like "Cine Latino," and "TV Colombia." Also, local channels and all the Dish Network channels. Premium channels included on additional plans. Multi-Channel Marketing. Business hours from 9:00 a.m. until 9:00 p.m., seven days a week. Installation services in twenty-four hours. Information 407-857-1838 and 407-468-3520.